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September 17, 1998

The Honorable Lisa Graham Keegan  
Superintendent of Public Instruction  
Arizona Department of Education  
1535 West Jefferson Street  
Phoenix, AZ 85007

Re: I98-007 (R98-005)

Dear Superintendent Keegan:

You have asked several questions regarding the applicability of the "public school fees tax credit law," 1997 Ariz. Sess. Laws ch. 48, § 3 (codified as Arizona Revised Statutes Annotated ("A.R.S.") § 43-1089.01), to extended-day kindergarten programs offered at public schools.<sup>1</sup> We conclude that because the tax credit in A.R.S. § 43-1089.01 is limited to fees paid to support extracurricular programs of public schools it is inapplicable to tuition payments, although the tax credit may apply to fees for extended-day kindergarten programs for enrolled students depending on the sponsorship and content of the program. We also conclude that the specific directions of the donor and the general limitations set by the Auditor General and the Department of Education, pursuant to A.R.S. § 15-271(C)(4), control the manner in which the fees collected may be spent.

### Background

In 1997, the Legislature enacted A.R.S. § 43-1089.01 to provide a tax credit for taxpayers<sup>2</sup> who paid fees to an Arizona public school to support the school's extracurricular activities. The tax credit applies to Arizona income taxes, begins with the 1998 tax year, is limited to a maximum of \$200 (whether the taxpayer files a single or joint return), and operates in lieu of a tax deduction. A.R.S. § 43-1089.01 (A)-(C). If the tax credit exceeds the taxes due under Title 43, or if there are no taxes due, the taxpayer may carry the credit forward for up to

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<sup>1</sup> "Public schools" include school district and charter schools. A.R.S. § 15-101 (3), (17), and (18).

<sup>2</sup> A "taxpayer" means an individual subject to a tax imposed by A.R.S. §§ 43-1001 through -1099. A.R.S. § 43-1001(12). By using the word "taxpayer" in A.R.S. § 43-1089.01, the Legislature provided that any individuals or couples, regardless of whether they have children enrolled in the school, may make use of the credit.

five consecutive taxable years' income tax liability. A.R.S. § 43-1089.01(D). In defining extracurricular activities that qualify for A.R.S. § 43-1089.01 tax credits, the Legislature provided that (i) the public school must sponsor the activity, (ii) students must be enrolled in the public school, and (iii) those students must pay a fee to participate. A.R.S. § 43-1089.01(E).

Your letter indicates that school districts and charter schools offer extended-day kindergarten programs for a fee to supplement the half-day instructional day paid for by the State. See A.R.S. § 15-901(A)(2)(a)(i). The content of these extended programs varies considerably and, for purposes of this opinion, we assume that the programs provide more than custodial service.<sup>3</sup>

### Analysis

The focus of your inquiry is limited to extended-day kindergarten programs and whether the distinctions between a "fee" and "tuition" affect the applicability of the A.R.S. § 43-1089.01 tax credit, how the tax credit requirements are applied, and what uses public schools may make of the fees collected pursuant to A.R.S. § 43-1089.01 for these programs.

**A. Section 43-1089.01, A.R.S., Is Limited to Fees Paid to Support Extracurricular Programs and Is Inapplicable to Tuition Payments.**

The Arizona Supreme Court has determined that Arizona's constitution guarantees children a free public education. See Ariz. Const. art. XI, § 6; *Shofstall v. Hollins*, 110 Ariz. 88, 90, 515 P.2d 590, 592 (1973); *Roosevelt Elementary Sch. Dist. v. Bishop*, 179 Ariz. 233, 248, 877 P.2d 806, 821 (1994) (Feldman, C.J., concurring). Because of this guarantee, we consider the distinction between tuition and fees critical in applying A.R.S. § 43-1089.01, which limits the tax credit to "fees" paid to support "extracurricular activities."

Generally, "tuition" is the price or payment for instruction. See WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2461 (1993). In relation to public schools, tuition ordinarily includes the direct and indirect costs paid by taxpayers to provide the education program offered by the public schools, A.R.S. § 15-824(F)(1)(a)-(d), for the instruction legally required to be taken or authorized to be offered. See A.R.S. § 15-802 (requires children between the ages of six and sixteen to attend school); A.R.S. § 15-821 (authorizes schools to admit children younger than six years of age in particular situations). The Legislature has precluded charter schools

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<sup>3</sup> School districts are without statutory authority to operate a day-care facility to provide merely custodial, rather than educational, services. Ariz. Att'y Gen. Op. I81-014. Charter schools are established to provide both a learning environment to improve pupil achievement and academic choices for parents and pupils and similarly may not provide strictly custodial services. See A.R.S. § 15-181(A).

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from charging tuition, A.R.S. § 15-185(B)(8), and has restricted school district tuition charges to very limited situations such as individuals over twenty-one years of age (A.R.S. § 15-361), certain non-resident pupils (A.R.S. §§ 15-764 (E)(1), -823 (A), and -824(A)), and adult students in vocational education programs (A.R.S. § 15-782.02). Therefore, tuition payments do not qualify for a tax credit under A.R.S. § 43-1089.01 because that statute is limited to "fees paid . . . for the support of extracurricular activities of the public school," and Arizona's public schools have little or no authority to charge tuition. *See Campbell v. Harris*, 131 Ariz. 109, 112, 638 P.2d 1355, 1358 (App. 1981) (school district governing boards only have the authority granted to them by statute); A.R.S. § 15-185(B)(8) (charter schools may not charge tuition). In the limited situations where tuition is statutorily authorized, the tuition payments would not qualify for the A.R.S. § 43-1089.01 tax credit because such payments do not represent extracurricular fees.

"Fees" are charges authorized by law for certain privileges or services. *See* Ariz. Att'y Gen. Op. 194-004; *see also* WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 833 (1993). In 1995, the Legislature enacted A.R.S. § 15-342 (24) to give school districts the authority to assess reasonable fees for high school fine arts and vocational education courses, optional services, equipment, and materials offered to high school pupils beyond those required to successfully complete the basic requirements of any other courses, optional programs offered when school is not in session, and optional extracurricular activities fees for both common<sup>4</sup> and high school students. 1995 Ariz. Sess. Laws ch. 71, § 1. That statute defines "extracurricular activity" as "any optional, noncredit, educational or recreational activity which supplements the education program of the school, whether offered before, during or after regular school hours." A.R.S. § 15-342 (24). That subsection limits the fees to the actual cost of the activity, equipment, or materials and establishes the procedures that school district governing boards must follow in setting the fees.<sup>5</sup>

The legislative directive to charter schools concerning extracurricular fees is not straightforward because the Legislature did not specifically authorize fees in the charter school enabling legislation. Notwithstanding this lack of specificity, we determine that our analysis concerning the requirements of A.R.S. § 43-1089.01 pertains to both school districts and charter schools for several reasons. First, by referring to "public schools" in A.R.S. § 43-1089.01, the Legislature provided both charter schools and schools operated by school districts with the opportunity to benefit from fees received through A.R.S. § 43-1089.01. Thus, it appears that the Legislature envisioned that all public schools are authorized to charge fees for extracurricular

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<sup>4</sup> Common school students include preschool children with disabilities and children who attend kindergarten and grades one through eight. *See* A.R.S. § 15-901(A)(4).

<sup>5</sup> Pursuant to A.R.S. § 15-342(24), school district governing boards shall adopt the fees at a public meeting after notifying all parents of enrolled pupils. That statute also permits school principals to waive fees if they create an economic hardship for the pupil.

activities. Second, we cannot interpret A.R.S. § 43-1089.01 in a vacuum or ignore the legal relationship between that statute and the legislative directive in Title 15 concerning extracurricular activities. *See Hughes v. Industrial Comm'n*, 113 Ariz. 517, 520, 558 P.2d 11, 14 (1976). To give effect to this legislative intent, we construe these interrelated statutes together in their references to fees and extracurricular activities. Third, we can find no legislative indication that taxpayers who pay fees in support of extracurricular activities to an Arizona public school and obtain a tax credit should have fewer safeguards related to the establishment or types of authorized extracurricular fees based on whether the public school is a district or charter school. Finally, the Legislature has directed us to construe statutes liberally to achieve their objectives and to promote justice. A.R.S. § 1-211(B).<sup>6</sup>

Thus, fees primarily encompass legally authorized, non-state funded charges of public schools for privileges or services offered by the schools beyond those required to complete the basic instructional program mandated by law. *See* A.R.S. §§ 15-342(24) and 43-1089.01(E). Fees paid to public schools that supplement their kindergarten programs<sup>7</sup> with extended-day programs may qualify for the A.R.S. § 43-1089.01 tax credit if the program satisfies the other statutory prerequisites addressed in this opinion.

**B. The Tax Credit Under A.R.S. § 43-1089.01 May Apply to Fees Paid for Extended-Day Kindergarten Programs Depending on the Sponsorship and Content of the Program.**

In addition to the fee requirement, A.R.S. § 43-1089.01 requires that fees subject to the tax credit be paid to support the "extracurricular activities of the public school," that the public school "sponsor" the activity, and that the activities be for "enrolled students". Payments for an extended-day kindergarten program thus must be for sponsored, extracurricular activity for enrolled students of a public school to qualify for the credit.

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<sup>6</sup> Although we have determined that charter schools have the legal authority to charge fees for extracurricular activities, the Legislature may wish to provide specific statutory authorization and establish limits for charter school fees.

<sup>7</sup> Both common and unified school districts offer kindergarten programs. A.R.S. § 15-901(A)(4) and (17). Charter schools may also offer kindergarten programs if authorized in their charter contract. A.R.S. § 15-183(E).

Although the Legislature defined "extracurricular activities" in A.R.S. § 43-1089.01, that provision is very general and difficult to apply.<sup>8</sup> For example, it is unclear which activities the Legislature wished to include as "extracurricular" because, along with examples of band uniforms and varsity athletic equipment in A.R.S. § 43-1089.01(E), it listed scientific laboratory materials which appear to be curricular.

To determine the Legislature's intent regarding fees that public schools may charge for extracurricular activities, we read the definition of extracurricular activities in the tax credit statute in conjunction with A.R.S. § 15-342(24), which authorizes school district governing boards to charge fees for extracurricular activities.<sup>9</sup> When the meaning of a statute is uncertain and, on its face, susceptible of more than one interpretation, we look to other statutes with the goal of harmonizing both provisions and ensuring consistency. *State ex rel. Larson v. Farley*, 106 Ariz. 119, 122, 471 P.2d 731, 734 (1970). We construe these related statutes as one law, governed by one spirit and policy, notwithstanding their enactment at different times, lack of reference to one another, and located in different chapters of the Arizona Revised Statutes. *Id.*

Because the fee must be approved pursuant to A.R.S. § 15-342(24), and the activity must be an optional, noncredit, educational, or recreational activity supplementing the student's education program, which occurs before, during, or after school hours, fees for scientific laboratory materials that supplement the educational program of the school but are not required to successfully complete the basic requirements of a course could be considered extracurricular pursuant to A.R.S. §§ 43-1089.01 and 15-342(24) and be eligible for the tax credit. *See Pima County v. Maya Const. Co.*, 158 Ariz. 151, 155, 761 P.2d 1055, 1059 (1988) (when reconciling two or more statutes, courts construe and interpret them to give effect to all statutes involved).

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<sup>8</sup> Section 43-1089.01(E), A.R.S., provides as follows: "[E]xtracurricular activities' means school sponsored activities that require enrolled students to pay a fee in order to participate *including* fees for:

1. Band uniforms.
2. Equipment or uniforms for varsity athletic activities.
3. Scientific laboratory materials."

(Emphasis added.)

<sup>9</sup> "[E]xtracurricular activity' means any optional, noncredit, educational or recreational activity which supplements the education program of the school, whether offered before, during or after regular school hours." A.R.S. § 15-342(24). We note that A.R.S. § 15-342(24) also authorizes school district governing boards to assess fees to high school pupils for curricular activities, specifically, fine arts and vocational education courses, and optional services, equipment, and materials beyond those required to successfully complete basic course requirements. These fees are not eligible for the A.R.S. § 43-1089.01 tax credit because they are charges for curricular activities. Likewise, if a charter school offers a curriculum with an emphasis on fine arts, performing arts, or vocational education, *see* A.R.S. § 15-183(E)(3), courses in such areas would be part of the required curriculum, rather than optional, and no fees may be charged. *See* A.R.S. § 15-185(B)(8).

Additionally, fees charged for extended-day kindergarten classes to supplement<sup>10</sup> the curriculum of the half-day kindergarten class could qualify as an extracurricular activity subject to the tax credit if the other requirements are met, notwithstanding replication and reinforcement of skills and curricula covered in the state-funded, half-day program.

Additionally, A.R.S. § 43-1089.01(E) mandates that the public school "sponsor" the activity. "Sponsor" means "one who assumes responsibility for some other person or thing." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2204 (1993). We understand that although a program may qualify as an extracurricular activity of a public school, it may be sponsored by an entity other than the school. Consequently, we note that to satisfy A.R.S. § 43-1089.01, the extracurricular fee must be paid to support the extracurricular activities of the public school and the school itself must actually sponsor the extracurricular activity.

There are certain situations that would not satisfy the statutory criteria for the tax credit that are worthy of mentioning. For example, if a school district or charter school offered an extended kindergarten day through the services of a third-party private provider that leased space on the school campus, the fee would neither be paid to support the extracurricular activities of the public school nor would the program qualify as a school-sponsored activity for purposes of A.R.S. § 43-1089.01. Likewise, a community school program (A.R.S. §§ 15-1141 to - 1143) that provides community-related services would not satisfy the extracurricular requirement for the same reasons.

**C. The Taxpayers' Directions, in Conjunction with the Memorandum Issued by the Auditor General and the Arizona Department of Education, Prescribe the Manner in Which Fees Paid Pursuant to A.R.S. § 43-1089.01 May Be Spent.**

Section 43-1089.01, A.R.S., is silent concerning how public schools may use and must account for the fees they receive in support of extracurricular activities. The Legislature has delegated to the Auditor General, in conjunction with the Department of Education, responsibility to prescribe how public schools shall apportion revenue. A.R.S. § 15-271(C)(4). In a recent memorandum, the Auditor General and Department of Education have determined, in part, that "[s]chools should maintain records adequately detailed to document that monies received are used for the campus and purpose intended by the taxpayer." See Uniform System of Financial Records for Charter Schools Memorandum No. 11 (April 3, 1998). Thus, public

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<sup>10</sup> "Supplement" is "something that completes, adds a finishing touch, or brings closer to completion or a desired state." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2297 (1993).

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schools must comply with the taxpayers' directions and the memorandum issued pursuant to A.R.S. § 15-271(C)(4) in apportioning revenue received pursuant to A.R.S. § 43-1089.01.<sup>11</sup>

We understand that some public schools are actively soliciting contributions for their extracurricular programs. Although the Legislature has not provided a mechanism to guide the discretion of public school officials in distributing these monies absent explicit taxpayer directions, we note that A.R.S. § 15-342(24) requires that fees charged for extracurricular programs not exceed the actual cost of the activity, service, program, equipment, or materials and that the fees be "reasonable." Moreover, school trustees are public officials and "must act for the public interest." *School District No. 69 v. Altherr*, 10 Ariz. App. 333, 338, 458 P.2d 537, 542 (1969).

#### Conclusion

We conclude that the tax credit in A.R.S. § 43-1089.01 may be applicable to extended-day kindergarten programs for enrolled students depending on the sponsorship and content of the program, but it is limited to fees paid to support the activities of enrolled students in extracurricular programs sponsored by public schools and is inapplicable to tuition payments. We also conclude that specific directions of the donor and the general limitations set by the Auditor General and the Department of Education, pursuant to A.R.S. § 15-271(C)(4), determine the manner in which the fees collected may be spent.

Sincerely,



Grant Woods  
Attorney General

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<sup>11</sup> Because the Legislature did not prohibit taxpayers from designating a dependent to be the beneficiary of the fee, parents or others who pay fees for designated children to participate in extracurricular activities sponsored by the public school in which they are enrolled may claim the fees paid as a tax credit. In drawing this conclusion, we refer to A.R.S. § 43-1089(D), which precludes tax credits for voluntary contributions made to school tuition organizations if the taxpayer designates a dependent to be the direct beneficiary. When we construe a statute, we presume that "what the Legislature means, it will say." *Padilla v. Industrial Comm'n*, 113 Ariz. 104, 106, 546 P.2d 1135, 1137 (1976). Thus, we determine that had the Legislature wanted to preclude taxpayers from designating the extracurricular fee for a particular beneficiary it would have included a prohibition in A.R.S. § 43-1089.01 as it did in A.R.S. § 43-1089(D).